

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

<p>KESHIA LEE WILSON</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>DEPT OF CORRECTIONS SOUTH DAKOTA; KELLIE WASKO, SECRETARY OF STATE AT SOUTH DAKOTA WOMANS PRISON; AARON MILLER, WARDEN AT SOUTH DAKOTA WOMANS PRISON; DOUG COOK, CASE MANAGER AT SOUTH DAKOTA WOMANS PRISON; ANDREA FOSHIEM, CASE MANAGER AT SOUTH DAKOTA WOMANS PRISON,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: right;">3:23-CV-03009-RAL</p> <p style="text-align: center;">ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND REQUIRING PLAINTIFF TO PAY AN INTIAL PARTIAL FILING FEE</p>
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Plaintiff Keshia Lee Wilson filed a pro se lawsuit under 42 U.S.C. § 1983. Doc. 1. Wilson is an inmate at the South Dakota Women's Prison. Id. at 2. She filed a motion for leave to proceed in forma pauperis and provided the Court with her prisoner trust account report. Docs. 2, 3. She also filed a motion for appointment of counsel. Doc. 4.

**I. Motion for Leave to Proceed In Forma Pauperis**

Under the Prison Litigation Reform Act, a prisoner who “brings a civil action or files an appeal in forma pauperis . . . shall be required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). The Court may, however, accept partial payment of the initial filing fee where appropriate. Therefore, “[w]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceeding or over a period of time under an installment

plan.” Henderson v. Norris, 129 F.3d 481, 483 (8th Cir. 1997) (per curiam) (alteration in original) (quoting McGore v. Wrigglesworth, 114 F.3d 601, 604 (6th Cir. 1997)).

The initial partial filing fee that accompanies an installment plan is calculated according to 28 U.S.C. § 1915(b)(1), which requires a payment of 20 percent of the greater of:

- (A) the average monthly deposits to the prisoner’s account; or
- (B) the average monthly balance in the prisoner’s account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

Wilson reports an average monthly balance for the past six months in her prisoner trust account of \$100.00 and an average monthly deposit of \$100.00. Doc. 3 at 1. Based on this information, the Court grants Wilson leave to proceed in forma pauperis, but she must pay an initial partial filing fee of \$20.00 (20 percent of her average monthly deposit). Wilson must pay the initial partial filing fee of **\$20.00 by July 5, 2023**. Her failure to pay the filing fee by July 5, 2023, will result in the dismissal without prejudice of her complaint.

## **II. Motion for Appointment of Counsel**

Wilson has filed a motion for appointment of counsel. Doc. 4. “A pro se litigant has no statutory or constitutional right to have counsel appointed in a civil case.” Stevens v. Redwing, 146 F.3d 538, 546 (8th Cir. 1998). In determining whether to appoint counsel to a pro se litigant, this Court considers the complexity of the case, the ability of the litigant to investigate the facts, the existence of conflicting testimony, and the litigant’s ability to present her claims. Id. At this time, Wilson’s claims do not appear to be complex, and she is able to investigate the facts and present her claims adequately. This Court believes that Wilson is capable of pursuing her claims pro se at this phase of litigation, and her motion for appointment of counsel, Doc. 4, is denied at this time.

Accordingly, it is

ORDERED that Wilson's motion for leave to proceed in forma pauperis, Doc. 2, is granted. Wilson will make a payment of **\$20.00 by July 5, 2023**, made payable to the Clerk, U.S. District Court. If Wilson does not pay the initial partial filing fee by July 5, 2023, her complaint will be dismissed without prejudice. The Court will conduct a 28 U.S.C. § 1915A screening after Wilson pays her initial partial filing fee. It is further

ORDERED that the institution having custody of Wilson is directed that whenever the amount in Wilson's trust account, exclusive of funds available to her in her frozen account, exceeds \$10.00, monthly payments that equal 20 percent of the funds credited the preceding month to Wilson's trust account shall be forwarded to the U.S. District Court Clerk's Office under 28 U.S.C. § 1915(b)(1), until the \$350 filing fee is paid in full. It is finally

ORDERED that Wilson's motion for appointment of counsel, Doc. 4, is denied.

DATED June 5<sup>th</sup>, 2023.

BY THE COURT:



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ROBERTO A. LANGE  
CHIEF JUDGE